IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 866 OF 2005

IN

NOTICE OF MOTION NO. 2620 OF 2005

IN

SUIT NO. 2425 OF 2005

WITH

NOTICE OF MOTION NO. 2620 OF 2005

IN

SUIT NO. 2425 OF 2005

Sudha Chowgule .. Appellant
(Ori. Defendant No.1)

V/s

1. Parmanand Patel
2. Indu Patel .. Respondents No.1 & 2
(Ori. Plaintiffs No.1 & 2)
3. Jaya Patel
4. Arjun Chowgule
5. Shiraj Salelkar
6. Tulsiram V. Patel (Pvt) Ltd.
7. Union Bank of India .. Respondents No.3 to 7
(Ori. Defendants No.2 to 6)

Aspi Chinoy, Senior Advocate with Mr.Navroz Seervai, Mr.D.D. Madon, Senior Advocates, and Mr.A.M. Sethna i/b Crawford Bayley & Co. for the Appellant.

Mr.Iqbal Chagla, Senior Advocate with Mr.J.P. Sen, Mr.Ketan Parikh, Mr.Khatlawala and Ms.Sheetal Mody i/b Little & Co. for Respondents No.1 and 2.

Mr.F.E. Devitre, Senior Advocate with Mr.Jimmy Avasia, Mr.Pecy Mody and Mr.Farhan Dubash i/b Federal &

Rashmikant for Respondent No.3.

Mr.Janak Dwarkadas, Senior Advocate and Mr.K.K. Shroff i/b Bachubhai Munim & Co. for Respondent No.4.

Mr.N.N. Amin i/b N.N. Amin & Co. for Respondent No.7.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATE OF RESERVING THE JUDGMENT : 14TH AUGUST 2006

DATE OF PRONOUNCING THE JUDGMENT: 7th September 2006

JUDGMENT: (Per H.L. Gokhale, J.)

1. This Appeal by Defendant No.1 to Suit No.2425 of 2005 seeks to challenge the ad-interim order dated 16th September 2005 in Notice of Motion No.2620 of 2005 passed by a learned Single Judge containing certain ad-interim directions and restrictions against the Appellant.

2. The Appellant - Sudha (aged about 49 years) and Respondent No.3 - Jaya (aged about 46 years) are daughters of Respondent No.1/Plaintiff No.1 - Parmanand Patel (aged about 80 years) and Respondent No.2/Plaintiff No.2 - Induben (aged about 74 years). In para 1 of the plaint, it is stated that Plaintiff No.1 suffers from mental infirmity and incapacity and is not capable of protecting his interest. The suit is stated

to be filed by Plaintiff No.1 under Order 32 Rule 15 of Civil Procedure Code through his next friend, i.e. his wife (Plaintiff No.2). Plaintiff No.2 is stated to have no interest adverse to Plaintiff No.1 and does not seek any reliefs for herself in the suit. The prayers in the suit and the motion therein are essentially directed against Sudha (the Appellant herein). Defendant No.3 to the suit is Arjun, son of Sudha, Defendant No.5 is their Advocate and Defendant No.6 is Union Bank of India. We will refer the parties as Plaintiffs or Defendants or by their names, depending upon the narration.

3. The said Plaintiffs No.1 and 2, Defendant No.1 (Sudha) and Defendant No.2 (Jaya) are directors of a private limited company known as "Tulsidas V. Patel (Pvt.) Ltd. (Defendant No.5 to the suit) with their shareholdings being as follows:-

Plaintiff No.1	:	85%
Plaintiff No.2 Defendant No.1 Defendant No.2	:	5% each

The said Tulsidas V. Patel (Pvt.) Ltd. [for short "TVP (Pvt.) Ltd."] has its assets consisting of shares in different companies and immovable properties at various places, the principal amongst them being the flats in a building known as "Kanchanjunga" and another building known as "D-Tower Building" both at Peddar Road and a bungalow known as "Bella Vista" also situated at Peddar

Road, Mumbai. The Plaintiffs have given the particulars of the main assets of the said TVP (Pvt.) Ltd. in para 30 and Exhibit-F to the plaint and their approximate value comes to Rs.367 crores. This list mentions that the TVP (Pvt.) Ltd. owns only two flats in Kanchanjunga Building. Defendant No.1 (Sudha) has stated with reference to this para 30 that she does not admit the correctness of the valuation and, according to her, TVP (Pvt.) Ltd. is entitled to many more flats in the said building. According to a chart given by their counsel in this court, the value of the properties owned by TVP (Pvt.) Ltd. and its subsidiaries comes to about Rs.1120 crores and it owns some 23 flats in Kanchanjunga Building. They are stated to be given on licence to various foreign consulates or companies and earn huge monthly compensation.

4. Plaintiff No.1 is stated to have executed a Will on 23rd January 2005 (Exhibit-G to the plaint) giving 50% of his personal property to Sudha and 50% to Jaya and none to his wife Induben. On the same day, he is stated to have signed two letters (Exhibits J and K to the plaint) addressed to Sudha and Jaya respectively. In the letter addressed to Sudha, he has recorded that he has given all of his shares to her with a direction that she should retain 46% to herself and give 39% to Jaya. No shares are however given to his wife. This

gift is made to Sudha and to Jaya on certain conditions stated in the two letters so that ultimately both of them get 50% of the assets in TVP (Pvt.) Ltd., as it will be pointed out hereafter.

5. The suit is filed by the Plaintiffs for a declaration that the said Will and the two letters and the purported gift / transfer of shares are null and void and have no effect in law and the same be cancelled. In the suit, interim injunction is sought from transferring and/or claiming or exercising any rights or benefits in respect of 85% share and operating the bank account of TVP (Pvt.) Ltd. with Union Bank of India (Defendant No.6 to the plaint). Interim injunction is also sought restraining Sudha from acting as chairperson of TVP (Pvt.) Ltd. and for restraining Defendants No.3 and 4 from acting as its directors. This is apart from the other reliefs in the plaint and the motion. A Receiver is also sought in respect of this 85% share. It is material to note that the Plaintiffs have been staying in the bungalow by name "Bella Vista" and their younger daughter Jaya with her husband Vishal Salgia stay with them. At the time when the above Will and the two letters were executed, Jaya had gone to USA for her second delivery, but her husband continued to stay with the Plaintiffs.

6. Now if we look at the typed copy of the Will annexed to the plaint, it is seen that it is executed in the presence of one Dr.Zarir Udwadia and Mr.R.A. Shah, a solicitor. It appoints one Dr.Hemant Patel, a practicing surgeon and brother of Indu Patel as the executor. The Will authorises the executor to divide the personal properties of Plaintiff No.1 equally between Sudha and Jaya. The Will states in para 5 thereof that the testator has provided sufficiently for his wife Induben and she has sufficient resources for her maintenance and upkeep. Hence, no provision was being made for her in the Will.

7. The letter dated 23rd January 2005 (Exhibit-J to the plaint) addressed to Sudha records that Plaintiff No.1 has handed over to her the share certificates with duly executed transfer deeds to represent his 85% interest in the equity share capital of TVP (Pvt.) Ltd. Paragraph 3 of this letter records that he is mentally fit and intellectually alert to form rational judgment and take clear and judicial decision. It further states that during this time, he wanted to ensure that his assets are equitably and evenly subdivided between his two daughters. Paragraphs 4 and 5 of this letter record as follows:-

"4. In the above background and to that end and intent, I gifted to you 85% in the said company so that you retain 46% interest in the said company as also the 5% interest you already hold and transfer 39% interest in the said company to your sister Jaya after intimating to you in writing that she has accepted the conditions which I have attached to the proposed gift of 39% interest in the company through you on her return.

5. In the unlikeliest event of Jaya not accepting the conditions, I want you to hold the entire 85% of the interest gifted to you and deal with 39% as separately set out in paragraph 6(B) hereinafter."

8. (i) Thereafter paragraph 6(A) of this letter records that in the event Jaya accepts the conditional gift, Sudha had agreed to transfer forthwith the 39% interest in the company from the 85% gifted to her to Jaya by executing all necessary transfer deeds. Thereafter she will make a scheme of arrangement under sections 391 to 394 of the Companies Act and incorporate a new company, to which assets representing 50% in value or as close to

that will be transferred. Paragraph 6(A)(iv) of this letter reads as follows:-

> "After the scheme is accepted and approved, the assets in the company would stand divided as desired by me hereinabove, 50% each or as close to that as would be possible and Jaya will have the first right to choose either the company or the transferee company, to which 50% assets have been spun off."

Ultimately, it is provided that Sudha on one hand and Jaya and Induben on the other will own the two companies in such a way that each of the two companies have 50% of the assets of TVP (Pvt.) Ltd.

. (ii) Paragraph 6(B) of this letter, however, provided that in case Jaya does not accept the conditional gift, Sudha will hold 39% of the shares for the benefit of Jaya and her children and she will distribute the corpus upon her children on their attaining the age of majority. In such an eventuality, Sudha will continue to hold 51% of the shares for herself, 39% on behalf of Jaya and her children and 5% each will be held by Jaya and Induben as they presently hold. The letter dated 23rd January 2005 addressed to

Sudha (Exhibit-K to the plaint) contains the similar conditions and expectations addressed to Jaya.

9. The Plaintiffs have contended that Plaintiff No.1 was mentally infirm and not capable of protecting his interest and this entire action of executing the Will and the two letters was manoeuvred by Sudha. It is their case that he was so incapable on 23rd January 2005 and thereafter also he continues to be so and in fact his condition had deteriorated. It is their case that the Plaintiffs were all the while acting under the aid and advise of one Subhash Patel, son of the eldest brother of Plaintiff No.1 and one Shirish Patel, a Chartered Accountant, who is the son of the elder brother of Plaintiff No.1. It is their case that since May 2001, Plaintiff No.1 was diagnosed as suffering from kidney failure and for that he visited U.K. and then to U.S.A. and has been under treatment over there as well as in Mumbai and he was required to undergo dialysis regularly. It is their further case that since July 2002, it is noticed that he started suffering from memory loss also and for that purpose he has been under the advise and treatment of a panel of leading neurologist in the U.S.A. led by Dr. Louis Caplan and various Indian doctors. They rely upon the record of medical treatment and the notings made by various

doctors from time to time to contend that he was incapable of making any such arrangement on 23rd January 2005.

10. Thereafter they have stated that based on these documents, Defendant No.1 (Sudha) has purported to get her appointed as Chairman of TVP (Pvt.) Ltd. This is without any authority to do so and without the consent or knowledge of the Plaintiffs or Defendant No.2 and without holding any meeting of the Board of Directors. In para 63 of the plaint, it is stated that she has purported to do so on the basis of the impugned documents. Thereafter she has got appointed as directors her son Arjun (Defendant No.4) and Shiraj Salelkar, an advocate who is assistant to Mr.R.A. Shah, Solicitor. It is therefore that they have sought Receiver in respect of 85% shares of TVP (Pvt.) Ltd. and also an injunction restraining Defendants No.1, 3 and 4 from disposing of or transferring 85% shares or exercising any rights based thereon, from operating the bank account of TVP (Pvt.) Ltd. with Union Bank of India (Defendant No.6), restraining Defendant No.1 from acting as chairperson and Defendants No.3 and 4 as directors.

11. The disputed documents are stated to be signed

on 23rd January 2005, but they are claimed to have been received by Jaya (Defendant No.2) along with the letter dated 20th May 2005 from Mr.R.A. Shah, Solicitor of M/s Crawford Bayley & Co. This is what Induben has recorded in her letter dated 1st June 2005 addressed to Mr.R.A. Shah. It is at this time that Jaya is supposed to have come back from U.S.A. after giving birth to twins, one of whom has survived. This letter is very significant since it is the first record from Plaintiff No.2 with respect to the documents executed on 23rd January 2005 and to which we will revert to later on. On coming to know about these two letters and the Will, this suit is filed for the aforesaid declaration and injunction on 12th September 2005. It was immediately moved for ad-interim orders before a learned Single Judge. At that time, no reply had been filed by Sudha, the Appellant herein.

12. The learned Judge heard the counsel for the Plaintiffs, Sudha as well as Jaya. He noted the submissions of the Plaintiffs and the allegations made in the plaint and that there was much material produced pertaining to mental and physical health of Plaintiff No.1. He noted that according to Defendant No.1 (Sudha), the story of the Plaintiffs was totally untenable. He referred to the fact that a number of

medical papers as well as documents executed by Plaintiff No.1 during the contemporaneous period were brought to his notice. He however took into consideration the fact and the right claimed by Defendant No.1 in respect of 85% shares was based on a gift deed. He therefore formed an opinion that till the hearing and final disposal of the motion, the shares are required to be frozen and that it was not possible to permit Defendant No.1 at that stage to act as if there was a valid Will. Therefore, in paragraphs 2, 3 and 4 of his order, he imposed certain restrictions which are as follows:-

(i) None of the parties will exercise any right in respect of the said 85% shares which are gifted to Defendant No.1.

(ii) A panel of doctors drawn from J.J. Hospital, Bombay Hospital and Lilavati Hospital dealing with Psychiatry and Neurology Department will examine Plaintiff No.1 and directly report to the Court.

(iii) Union Bank of India will continue the arrangement of joint operation of the bank account between Defendant No.1 and 2.

(iv) As far as the assets of the company are concerned, Plaintiff No.2 (Induben), Defendant No.1 (Sudha) and Defendant No.2 (Jaya) will maintain those assets as they were and will not sell or dispose them of or create any third party rights except in the ordinary course of business.

(v) Plaintiff No.2 (Induben) and Defendant No.2 (Jaya) will keep Defendant No.1 (Sudha) informed about the business decisions, if any, taken by them.

13. Being aggrieved by this ad-interim order, this Appeal has been filed by Defendant No.1 (Sudha). This Appeal came up for consideration before another Division Bench (S. Radhakrishnan & S.C. Dharmadhikari, JJ.) from time to time. The concerned Division Bench passed an order on 11th October 2005 wherein it referred to paragraph 3 of the order of the learned Single Judge, in which he had directed constitution of panel of doctors to examine Plaintiff No.1. To prima facie satisfy themselves regarding mental condition of Plaintiff No.1, the judges personally interviewed him in chambers. They found him, as recorded by them, "totally incoherent and

confused". Thereafter they directed a panel of doctors from these three hospitals to examine Plaintiff No.1. The panel was to consist of one doctor from Psychiatry and Neurology Departments of each of the three hospitals.

14. It appears that the panel of doctors examined Plaintiff No.1 on 7th December 2005 and gave its report on 31st January 2006. The appeal thereafter appeared before another Division Bench (Kshitij Vyas, CJ. & A.S. Oka, J.) on 12th June 2006, when the Division Bench made the following order:-

> "With the consent of the parties, Notice of Motion No.2620 of 2005 be placed before us for hearing and final disposal on 27th June 2006. In the meanwhile, to complete the pleadings, all parties to the notice of motion are directed to file replies, rejoinder on or before 26th June 2006."

Since the motion itself was to be heard by a Division Bench, the Appellant (Sudha) has thereafter filed her affidavit in reply affirmed on 23rd June 2006. Plaintiff No.2 (Induben) has filed her rejoinder rather belatedly, i.e. on 3rd August 2006, which was during the course of hearing when the matter was placed before

this Bench. Defendant No.2 (Jaya) has also filed her affidavit in reply affirmed on 3rd August 2006 and she has supported the motion moved by the Plaintiffs. Since the appeal and the motion have been allotted to this Bench, we have heard them from day to day with the assistance of the counsel. Apart from the pleadings, the Plaintiffs have filed a compilation consisting of list of their medical reports and another consisting of correspondence between the parties. Defendant No.1 (Sudha) has separately filed an affidavit affirmed on 27th March 2006 containing her objections to the report dated 31st January 2006 made by the panel of doctors. She has enclosed therewith the medical literature on the kind of problems which Plaintiff No.1 is suffering and the documents showing the activities which he has been undertaking during the contemporaneous period. She has also placed on record (i) the statement showing approximate market value of the properties owned by TVP (Pvt.) Ltd. with enclosures thereto, (ii) the correspondence and the documents concerning the loss of ration card and the application made by Plaintiff No.1 to include Sudha's name also in his ration card. The counsel have taken us through relevant authorities as well.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

15. It is submitted on behalf of the Plaintiffs that Plaintiff No.1 had first suffered the problems concerning kidneys. This was from May 2001 when he was first treated in U.K., then in U.S.A. and subsequently he has been under treatment in Mumbai and he has to undergo dialysis from time to time. It is their further case that in July 2002 when Plaintiff No.1 went to Manchester and consulted one Dr. Ram Gokal for the purposes of his kidney problem, he was advised to get assessment for his mental health also. He was examined by a neurologist Dr.Jeremy Dick and it was revealed that he was suffering from memory loss. It was secondary to cerebral vascular disease. It is thereafter stated in the plaint that in September 2002, he was examined in U.S.A. by a neurologist Dr.Louis Caplan in Beth Israel Deaconess Hospital at Boston. The medical papers of his treatment are produced and the first report of Dr.Caplan, which is dated 20th September 2003, records the history of his problem and as to how Dr.Caplan examined him and, in the last paragraph, the report states:-

> "I think that it is a toxic metabolic encephalopathy with multiple features. I don’t think that this is a degenerative vascular disease or alzheimer like dementia. I do think

that it is reversible."

Plaintiff No.1 was diagnosed to be suffering from Idiopathic Normal Pressure Hydrocephalus wherein fluid gets collected near the brain and one of the procedures suggested is to remove that fluid. This is to be done by installing a shunt near the brain. Accordingly, a shunt was installed in April 2003 whereafter Plaintiff No.1 became mobile and much better. Another shunt was put in June 2003 and it was replaced in December 2003. There are two further reports of Dr.Caplan dated 11th December 2003 and 22nd January 2004. The first appears to be one before the change of the shunt effected in December 2003 which can be noticed in the subsequent letter dated 22nd January 2004. In the earlier report, he states that on examination, he found him considerably worse. He was less spontaneous. His answers were brief and he had difficulty persevering, for example in counting backwards from ten or naming articles of clothing. The doctor did not notice any grammatical or actual word errors. His gait was quite poor with loss of balance and difficulty initiating gait. As against this, in the subsequent report, he states that his walking was a little better although he was still a little unsteady. He was able to count backward from 20 to 0 and was able to complete the task. He was able to

name 6 fruits and about 6 cities in India which is much better. The doctor then records that he understands that shunt was changed on 12/31 and he was encouraged about the improvement. Thereafter he states that he continued to think that his neurological problems were related to fluid accumulation in his head. Thereafter he states -

> "I do think however it is rather complex and it also relates to his kidney function and his fluid balance".

These reports are emphasised by Mr.Chagla, counsel for the Plaintiffs, that if this was his position in January 2004, surely he was not capable of understanding as to what was done in January 2005.

16. It is the case of the Plaintiffs that at the relevant time, Plaintiff No.1 was above 79 years of age (he is born on 2nd June 1925). It is their case that in view of the protest by the Plaintiffs, on 23rd January 2005 a further writing was executed and was signed by both the Plaintiffs on the same day. The original of it was handwritten one. It is the case of the Plaintiffs that they have not written the same. This writing is to the following effect:-

" **TO WHOMSOEVER IT MAY CONCERN**

All the documents which I have signed today shall be revised by my nephew Mr.Shirish Patel (C.A.). His suggestion will be incorporated in these documents.

My (Mrs. Indu Patel) 5% interest in the Tulsidas V. Patel will be given equally to my daughter Sudha and Jaya upon my demise."

sd/- P. Patel sd/- I.P. Patel

Mumbai

Dated 23-1-2005

sd/- R.A. Shah, Solicitor"

It is material to note that the second part of this document beginning with "My (Mrs.Indu Patel) onwards" appears to be written subsequently and it is perhaps in a different handwriting. It is the Plaintiffs' further case that Subhash Patel was given a copy of the Will, but the copies of the two letters addressed by Plaintiff No.1 to Defendant No.1 (Sudha) and Defendant No.2 (Jaya) were received by the Plaintiffs only when Jaya returned from U.S.A. It is Jaya who is claimed to have been

given copies of these two letters by Mr.R.A. Shah, Solicitor. This is what stated in Induben's letter dated 1st June 2005 addressed to M/s Crawford Bayley & Co. drawing attention of Mr.R.A. Shah. It is stated in the plaint that Plaintiff No.1 was pressurised to sign some documents on 23rd January 2005 and that he has been made to sign them when he was incapable of understanding as to on what papers he was signing.

17. It is further submitted on behalf of the Plaintiffs that subsequently they learnt that Defendant No.1 has taken over as a chairperson of the company. It is their case that she has fabricated the minutes which is a conspiracy on her part. It is also their case that on 25th January 2005, Sudha managed to obtain a certificate from Dr.Peter Black of U.S.A. that Plaintiff No.1 was in a sound condition. However, Dr.Black himself has clarified this later on to state that he had seen Plaintiff No.1 in Jaipur earlier. It is also pointed out that now a decision is taken on behalf of the company that the Plaintiffs will only be permitted to stay in Bella Vista until they find alternative accommodation. As against which, Defendant No.1 has moved the authorities concerned to obtain a duplicate ration card to show that she was staying in Bella Vista. This is when in fact she herself is

staying on 26th floor of Kanchanjunga Building. It is the case of the Plaintiffs that Plaintiff No.1 could not have signed the kind of letters recording the gifts if he understood their contents. It is submitted that under these letters, all 85% shareholding of Plaintiff No.1 is first supposed to go to Sudha and thereafter if Jaya accepts the conditions, she will get 39% of those shares when Sudha transfers them to her leaving 46% of the shares with Sudha. Further, if Jaya does not accept the conditions and the gift, in that case Sudha is supposed to hold all the shares of Jaya for the benefit of her children until they become major. That means for quite some time all the shareholding will remain with Sudha and Jaya will be nowhere. Besides, nothing is provided by Plaintiff No.1 to Plaintiff No.2. Normally he would not have made any such gift.

18. It is submitted that when the earlier Division Bench heard this matter, they have themselves recorded on 11th October 2005 that they found Plaintiff No.1 to be totally incoherent and confused. Thereafter the panel of 6 doctors have examined Plaintiff No.1 and have given its report. This report is made after his examination on 7th December 2005. The panel consisted of 3 neuro-physician and 3 psychiatrists. The first paragraph of their letter itself is sufficient which

gives the conclusion as follows:-

> "It is the unanimous feeling of the six members of this panel that Mr.Patel is suffering from definite deficits in his cognitive functions and also his working memory, which lead to an impairment in all aspects of independent functioning."

The Plaintiffs have assailed the role of Mr.R.A. Shah. It is stated that he was solicitor of Sudha and was in fact appearing for a party against TVP (Pvt.) Ltd. in their earlier litigation. Surely, Mr.R.A. Shah was not likely to act in the interest of Plaintiff No.1. As far as Dr.Hemant Patel is concerned, it is stated that he did not have the best of relations with Induben though he is her brother. As far as Dr.Zarir Udwadia is concerned, no specific allegation is made against him. It is however submitted in Court that he was not the regular doctor to attend the 1st Plaintiff.

19. Mr.Chagla for the Plaintiffs, therefore, submitted that the suit has been rightly filed under Order 32 of Civil Procedure Code. and the 2nd Plaintiff is acting as the next friend of the 1st Plaintiff. He referred to a few judgments. Firstly, a judgment in the

case of **Pransukhram v. Bai Ladkor - 1899 (1) BLR 86** to the effect that when a suit is filed by a next friend, principles of equity are to be observed and applied. Then he referred to a case in **Re: Cowasji Beramji Lilaoovala - 7 ILR Bombay 17** to the effect that unsound mind is not a medical but a legal expression. A single judge has held therein that what the Court is to see is not that the party is absolutely of unsound mind but is incapable of any proper or providential management. Thereafter he referred to a Division Bench judgment in the case of **Somnath v. Tipanna - AIR 1973 Bombay 276** to the effect that when a suit is filed by a next friend under Order 32 Rule 15 of Civil Procedure Code, a separate application is not necessary. He may make a statement in the plaint that the Plaintiff is of unsound mind and it is the duty of the court to hold appropriate inquiry. The inquiry ordinarily includes calling of the plaintiff himself and questioning himself in court and that it is open to the court to take further assistance in the form of medical examination and the evidence of the doctor. In para 18 of this judgment, however, it is recorded that such a finding of a court does not and cannot bind the Defendant who may, after entering appearance, point out to the Court that it had been misled into giving a wrong finding and the Defendant was willing to prove that the Plaintiff was a person who was

capable defending his own interest. Lastly, he referred to a judgment of the Apex Court in the case of **Krishna Mohan Kul v. Pratima Maity - AIR 2003 SC 4351**. It was a matter concerning validity of the Deed of Settlement. The Apex Court held in para 12 that when a person is in a fiduciary relationship with another and the latter is in a position of active confidence, the burden of proving the absence of fraud, mis-representation or undue influence is upon the person in the dominating position. Where an active, confidential or fiduciary relation exists between the parties, there the burden of proof is on the donee, i.e. upon the person receiving the benefit. In para 17 of the judgment, it is further stated that the logic is equally applicable to an old, illiterate, ailing person who was unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act.

20. Mr.Chagla therefore submitted that this is a fit case for grant of the injunction as sought. It is submitted that Plaintiff No.1 was not capable of understanding the document on which signatures were taken on 23rd January 2005 and that he continued to be incapable when the suit was filed justifying the action by his wife to protect his property. The appointment of

Receiver and injunction is therefore justified.

21. Mr.Devitre, learned counsel appearing for Defendant No.2 (Jaya) supported the submissions of Mr.Chagla appearing for the Plaintiffs. He firstly referred to the letter of Sudha herself dated 18th June 2004 addressed to the directors of TVP (Pvt.) Ltd. which recorded that for 3 years prior to that letter when Mr.Patel was in U.S.A. for 4 months or more, only Jaya had been signing for the company with full trust and authorisation. He submitted that if this was so, where was the occasion for Plaintiff No.1 to now authorise Sudha and given the entire business in her hand. He submitted that Sudha did not have any business experience, but had dealt with only Ford Motors earlier, a business of TVP (Pvt.) Ltd. and nothing else. He then pointed out that after the signing of the gift letters by Plaintiff No.1, M/s Crawford Bayley & Co. had written a letter to Jaya that she had been removed as director of the company since she could not attend the necessary number of meetings of the company. It is however material to note that the letter clearly states at the end of it that her ceasing to be a director was purely on account of operation of law and that steps will be taken to reappoint her as before on the Board at the earliest on the ground of equity and fairness. In

his submission, the certificates of Dr.Caplan and Dr.Black are more relevant since they are neurologists. Lastly, he drew our attention to the e-mail which Jaya had sent to Arjun, son of Sudha on 11th March 2005 on coming to know about the developments in India. The e-mail records that Sudha had got a Will of Dada (Plaintiff No.1) made. It states that she had misrepresented the true facts to the witnesses and others. It further states that they all know the truth of what Dada's mental condition is like and it is unfair to make a mockery of it. The e-mail further expresses dismay at Subhashbhai not being taken into confidence.

REPLY ON BEHALF OF SUDHA (DEFENDANT NO.1):

22. Mr.Chinoy, learned counsel appearing for Sudha, principally advanced four submissions.

(i) The evidence on record in the form of medical reports and certificates establishes that on 23rd January 2005, Plaintiff No.1 was fully capable of making his own decisions and comprehending his actions.

(ii) Apart from the medical record, various activities of Mr.Patel and the actions taken by him in the contemporaneous period show that he was in a position to understand or comprehend his actions on 23rd

January 2005. It is the case of the Plaintiffs that even when the suit was filed, he was capable of deciding for himself and there was no need of any next friend for him.

(iii) The case sought to be made out by Plaintiff No.2 is also belied by her own role, i.e. her participation in the process of division of the property, the involvement of her brother Dr.Hemant Patel, and also the fact that Plaintiff No.2 had also arranged to make a Will of Plaintiff No.1 through M/s Gagrat & Co. in February 2005.

(iv) The suit purported to be filed under Order 32 of Civil Procedure Code was not maintainable.

23. As far as the medical condition of Mr.Patel is concerned, Mr.Chinoy submitted that it is undoubtedly true that from May 2001 onwards, Plaintiff No.1 was diagnosed as suffering from renal failure and then he was placed on dialysis from time to time. From September 2002 onwards, he was under treatment for Idiopathic Normal Pressure and he was consulting Dr.Louis Caplan and Dr.Peter Black. The first certificate of Dr.Caplan dated 20th September 2002 itself states that his problem was not alzheimer like

dementia and that it was reversible. He has stated that patients like Mr.Patel get very much better with spinal tap, actually removing the fluids, which is what has been done from April to December 2003. He referred to a number of certificates on record. Thus, on 26th January 2004 Dr.Caplan stated that Mr.Patel was neurologically stable to make his personal, company, legal and financial decisions such as a living will, and that he was fully capable of comprehending his actions. He has stated the same thing again on 21st January 2005, viz. that he continues to be neurologically stable and able to make his own personal, legal and financial decisions and that he was capable of comprehending his actions.

24. He then referred to the certificate of Dr.Bahadur, a Nephrologist from Jaslok Hospital and Prof. Gokal from Department of Renal Medicine in Manchester. He has stated that on 30th January 2005 his dialysis and other treatment maintained him in stable and good condition. Similar is the certificate of Dr.Ajay Singh of Harvard Medical School dated 1st March 2005 that he was clinically and mentally stable. In his submission, there was no reason to dispute any of these competent persons. Besides, the two letters of gift dated 23rd January 2005 were signed by Mr.Patel on the same day on which he signed his Will, which is signed by

Mr.Patel in the presence of Dr.Zarir Udwadia. He further points out that when these documents were signed, Dr.Hemant Patel, brother of Induben was present all throughout. He is a practicing surgeon apart from being brother of Induben. The submission of Mr.Chinoy is that when the 1st Plaintiff undergoes a dialysis, he is much better and after the shunt was inserted, the problem of NPH is also under control. The inference that Mr.Patel signed the documents on 23rd January 2005 without understanding the implications thereof is a serious one and should not be drawn in the face of the aforesaid material on record. Mr.Chinoy submits that all medical examinations of Plaintiff No.1 whether in U.S.A. or in India had been conducted in the presence of Defendant No.1, i.e. Sudha and Induben. The only examination, which is done thereafter in her absence, is by Dr.Fali Poncha in February 2005 in India, who has certified that Mr.Patel suffers from Dementia, most likely of Alzheimer type and that his judgment is impaired. According to Mr.Chinoy, this runs counter to the opinions of Dr.Caplan and Dr.Black. In fact, subsequently it appears that Plaintiff No.2 wrote to Dr.Peter Black to get his opinion. He has however replied on 4th August 2005 that it will require a neurologist or a physician to assess whether Mr.Patel is fully capable of directing his own affairs at this time.

25. Mr.Chinoy assailed the report of the panel of doctors which was appointed by the earlier Division Bench. It is material to note that this report is on the condition of Plaintiff No.1 as seen by them on 7th December 2005. Mr.Chinoy pointed out that this report was also made in the absence of Sudha and when Induben alone was present. He pointed out that the report has ignored the statements made by Mr.Patel and appears to be influenced by what Induben had told the doctors. By way of a major contradiction in this report, he pointed out that whereas the Mini-Mental State (MMS) examination was the only test applied by this panel, as per the requirements one is supposed to obtain at least 24 marks out of 30 to attain the grade of a normal cognitive ability. The panel gave him 23 marks when in fact the actual calculation shows even as per their report that he had obtained 24 marks. The panel has conducted no further test although numerous tests are available. He submitted that most of the observations of the panel speak about Mr.Patel’s personality rather than his cognitive ability.

26. Independent of these medical reports, Mr.Chinoy pointed out that during this very period in September 2003, Mr.Patel executed a gift deed of two apartments in

favour of Induben. These two apartments together are worth approximately Rs.40 crores. Jaya is a witness to this gift deed. He had also attended the meetings with F.D. Petit Parsi Sanatorium Trust in March 2004 to resolve the boundary dispute between his property and the trust property. There is also the record of Plaintiff No.1 having acted for the benefit of an educational institution floated by him.

27. Mr.Chinoy accepted that as far as the Will and the two letters of gift are concerned, they were drafted by Mr.R.A. Shah on the instructions of Mr.Patel and this was to the knowledge of Induben. This can be seen from R.A. Shah's certificate stating that he had met Parmanand Patel on 20th January 2005 when he had told him that he would like to treat both of his daughters equally in every way. The letter further states that he received a message that he should meet him on 23rd January 2005. On that day, he executed his Will in his presence which was attested by Mr.Shah. He also executed two letters addressed to Sudha and Jaya in his presence. Mr.Shah has also certified that he found Mr.Patel fully possessed of his intellectual faculties and in a fit condition to form rational judgment and take decisions. There is also a certificate of Dr.Hemant Patel dated 23rd January 2005, which states

that he was present when Mr.Patel instructed his lawyers to prepare necessary papers in certain manner and prepared his Will which would leave his estate in favour of his daughters equally. Induben in her letter dated 1st June 2005 to Mr.R.A. Shah records that on 23rd January 2005 Mr.R.A. Shah had visited her residence for obtaining her husband's signature on some papers prepared by him at the instance of Sudha.

28. Mr.Chinoy points out that Jaya was married some times in 1997 to one Vishal Salgia who is 10 years younger to her and an ex-employee of TVP (Pvt.) Ltd. Mr.Patel did not approve of this marriage which is what is specifically averred in the reply filed by Sudha, and on which there is no specific counter from either Induben or Jaya. Mr.Chinoy submitted that all throughout Mr.Patel wanted his assets to be divided equally which is what he has done under the disputed documents. On 20th January 2005, he had called Mr.R.A. Shah for that purpose. On 22nd January 2005 a meeting of the company was held. The original shares were lost and hence duplicate shares were issued, countersigned by one Ms.Kotian, authorised signatory of the company. Induben also received those duplicate shares by giving necessary indemnity. It is thereafter that on 23rd January 2005 the necessary documents were executed.

Induben and Jaya do not want to give Sudha the shares as desired by Plaintiff No.1. They want to wait till he passes away so that both of them will get 1/3rd share and Sudha will be restricted to 1/3rd share. It is with this design that the present suit is filed.

29. According to Mr.Chinoy, the intention of Induben is clear from her letter dated 1st June 2005. All throughout it, she speaks about her own right. She does not state that Mr.Patel was incapable of signing the papers. In the second para of this letter addressed to M/s Crawford Bayley & Co., she states that her husband was most reluctant to sign any papers, more particularly on account of his physical and mental condition, but Sudha created the situation and Mr.Patel was forced to sign the papers without understanding or knowing the same. She accepts that a review of these documents by Mr.Shirish Patel was provided and that was signed by her. This was undoubtedly to take care of her interest. The letter makes a grievance in para 3 that the division is to be made in two parts only and at the end of para 4 it states that Induben is surprised that Sudha should now resort to technicalities with a view to grab the property of her father for herself ignoring her right and claim over the same. Mr.Chinoy, therefore, submitted that the grievance of the 2nd Plaintiff was

that her right was affected and that the property was being divided only in two parts.

30. In this connection, he pointed out that on the top of it, Induben got a Will of Parmanand Patel executed in February 2006 with the help of M/s Gagrat & Co. The letter sent by M/s Gagrat & Co. and their receipt of having received Rs.5,000/- for drafting the Will has been placed on record. Mr.Chinoy, therefore, submitted that if Mr.Patel was incapable of executing any such document, it was certainly not expected that Induben should get such a Will executed and which is not being produced in spite of a demand having been made. The letter of M/s Gagrat & Co. is dated 26th February 2005. It refers to Mr.Patel's letter dated 8th February 2005 and further states that his original Will is kept in a sealed envelope with one of their solicitors Mr.Jani. There is also a receipt issued by M/s Gagrat & Co. on 26th February 2005, a photocopy of which is placed on record. As far as the controversy about the ration card is concerned, Mr.Chinoy placed on record the correspondence entered into by Mr.Patel with Gamdevi Police Station. His letter dated 18th February 2004 records that he was intending to apply for a duplicate ration card since his original ration card was lost. He has accordingly applied that the name of his daughter

Sudha be also included in the ration card. This application is made on 18th December 2004, i.e. much prior to the gift deed and the Will being executed a month later on 23rd January 2005.

31. It was brought to our notice that as far as the meeting of the company held on 22nd January 2005 is concerned, Plaintiff No.2 was the chairperson. A decision was taken to issue duplicate share certificate on the basis of an indemnity bond. She approved and signed to confirm the minutes of earlier meeting held on 11th January 2005. She has still not denied having signed the indemnity bond. Obviously, the indemnity bond was executed only in the context of the proposed gift. It was in this meeting only that the decision regarding surrender of tenancy and grant of license in favour of Parmanand Patel for the Bella Vista Bungalow was taken. This was only with a view to see to it that no third person claims tenancy after them. Mr.Chinoy made it clear that there is no intention whatsoever to dishouse either Mr.Parmanand Patel or Induben.

32. It was submitted on behalf of Sudha that if she had any such sinister plan, there was no reason for Dr.Hemant Patel, who is brother of Induben, to support it. He has in fact cautioned her against her greedy nature and has written her a letter after going back to Mombasa. In this letter, which is very much contemporaneous and written on 30th January 2005, he tells his

sister not to be greedy for 30% share which she would get on the demise of her husband (it should be 33%). In this letter, he states that whatever that has been done is at the instance of Parmanand Patel and after due consultation amongst the family members. He has further recorded his conversation with her on 29th January 2005 wherein she had made a grievance that he had left her as a bhikari (beggar) by virtue of the document which had been signed and, therefore, he stated that what was done was as per the wishes of Mr.Patel.

33. As stated above, last but not the least, Mr.Chinoy submitted that the suit was not maintainable under Order 32 of Civil Procedure Code. He submitted that the suit by an infirm person has to be only by him. The next friend cannot be a separate party in such a suit. That apart, Order 32 requires the next friend not to have any adverse interest. He submitted that in the present case, undoubtedly Plaintiff No.2 was motivated by her own interest and it was running counter to what was the intention of Mr.Parmanand Patel. He accepted that a Single Judge of this Court in **Fatima Abdul Rehman v. Salman Moin Zafar - AIR 2004 Bombay 239** had held that being an interested party is different from having an adverse interest. He however pressed into service a short order of a Division Bench of Madras High Court in the case of **Sami Rao Jagadab v. Eliavatha Row Gayabavada- 16 Madras Law Journal Reports 357 decided on 6th September 1905**. In this matter, a person, who

was the presumptive heir to the property of a minor, was held to be one whose interests are adverse to that of the minor and was therefore removed from the guardianship. He therefore pressed for the dismissal of the motion.

CONCLUSION:

34. We have noted the submissions of the counsel. In the present case, we are concerned with the question as to whether we should grant the interim order as prayed in the motion or what should be the appropriate interim order. Before we deal with the rival submissions, we would like to record that since this is a family dispute, a good effort was made by the Court to settle it amicably, but it failed. The Plaintiffs are contending that Plaintiff No.1 was incapable of understanding and signing the disputed documents on 23rd January 2005 and as of now also he continues to be so and they rely upon the report by a panel of doctors appointed by this Court, which panel has seen him on 7th December 2005. As against that, it is the contention of Defendant No.1 that not only Plaintiff No.1 was in good and sound mental condition on 23rd January 2005 but he continues to be so as of now. The material two dates are 23rd January 2005 and the date of filing of the suit, i.e.12th September 2005 though the medical record and the statements of witnesses with respect to the condition of Mr.Patel on 23rd January 2005 will be more relevant. As far as 23rd January 2005 is concerned, substantial material has been placed on record by

Defendant No.1 (Sudha) containing the certificates of doctors who treated Mr.Parmanand Patel all throughout. It is also material to note that on that day, a Will was executed by Plaintiff No.1 and it is countersigned by Dr.Udwadia. Besides, Dr.Hemant Patel, who is brother of Induben, was present on that day and he has recorded that Mr.Parmanand Patel understood what was being signed by him. As against this material, the Plaintiffs are relying upon the report of Dr.Caplan made in January 2004 when at that particular point of time also there was only a limited improvement in Mr.Patel and which indicated that Plaintiff No.1 would not be in a proper condition an year later in January 2005. They rely upon the report by Dr.Fali Poncha made in February 2005 which is contemporaneous. On the other hand, Mr.Chinoy has placed good medical literature on record on the kind of problem which Mr.Patel suffered from and submitted that depending upon as to whether he has undergone dialysis and as to what is the fluid position in his brain, the person concerned is in a normal condition.

35. In our view, these are aspects which will be better gone into when the suit is heard and decided on the basis of evidence in chief and cross-examination and full opportunity to all concerned and consideration of documentary evidence and medical literature. Any definitive conclusion at this interlocutory stage would lead to casting reflection on the doctors whose certificates are relied upon by both the sides and

it will be so done without this opportunity to fully explain their certificates, opinions and positions. Dr.Caplan, Dr.Black, Dr.Hemant Patel as well as various doctors have given certificates stating that on 23rd January 2005 Mr.Parmanand Patel was capable of understanding what he was doing. Dr.Udwadia has countersigned his Will. Mr.Chagla has disputed the correctness of these certificates and the inference sought to be drawn from them. On the other hand, Mr.Chinoy has criticised the report of Dr.Fali Poncha as well as that of panel of six doctors appointed by this Court. He has shown the internal contradictions in their reports. For the very reasons stated above, as of now we only note the criticism, but refrain from recording any critical opinion about their reports as well. We however record that the panel report is dated 7th December 2005. It speaks about the condition of Mr.Patel two months after filing of the suit. It may perhaps have some relevance about the mental condition of Mr.Patel at the time of filing of the suit two months earlier, but not much about his condition much earlier on 23rd January 2005.

36. Undoubtedly, the occasion to file a suit through a next friend arises if on the date of filing of the suit the person concerned is infirm and incapable of taking decisions for himself. At the same time, what is equally important is that the person concerned filing the suit for the infirm person as a next friend is not expected to have any interest adverse to the

infirm person. As noted above, a Single Judge of this Court has taken the view that it is permissible for a next friend to be an interested party in the same suit though as against the Defendant. Mr.Chinoy disputes the correctness thereof and the same will require a re-examination. The fact however remains that the conduct of the 2nd Plaintiff leaves much to be desired. It is clearly seen that in the very first letter written in June 2005, she is claiming about her own rights and making a grievance that the entire property is being divided only between the two daughters. This is on the background that two flats worth around Rs.40 crores were gifted to her by Plaintiff No.1 in September 2003 when, even according to her, he was not in stable mental condition. It has also come on record that immediately on signing of the disputed documents, she appears to have got a Will executed by Mr.Parmanand Patel with the help of another firm of solicitors. It is supposed to be kept with the said solicitors' firm. The same is not produced in spite of a notice by Defendant No.1, and much will be known when the Will is brought on record. One more flat has been gifted by Mr.Patel jointly to Induben and Jaya in the meanwhile which also cannot be ignored. Induben is making a grievance that the property is being divided only between the two daughters excluding her share. This is prima facie adverse to what the 1st Plaintiff intended to do through the disputed documents if they are ultimately held to be valid. In the event of any such finding, there will be much force in the submission of Mr.Chinoy that the

suit is not maintainable at the instance of the 2nd Plaintiff acting as the next friend.

37. The Plaintiffs have criticised the conduct of Sudha, but she has explained it by pointing out that all throughout she has been attending her father (the 1st Plaintiff) by going with him to U.S.A. for his medical treatment. It is her case that on 20th January 2005, Mr.Parmanand Patel called Mr.R.A. Shah to prepare necessary documents. Induben's brother Dr.Hemant Patel was present all throughout. On 22nd January 2005 in a meeting of the company, duplicate shares were issued to all concerned including Induben since they were lost in the meanwhile. The meeting was chaired by Induben. She signed the minutes of the earlier meeting and also signed an indemnity bond in respect of duplicate shares. A dispute is sought to be raised about the cancellation of the stamps thereon, but the same has been explained by Mr.Chinoy. It is thereafter that on the next day, the disputed Will and the gift have been signed. It is her case that her father wanted to give the properties half and half to the two daughters and the documents clearly state that Induben had already been provided adequately. It is stated on behalf of Sudha that though her name is entered into the lost ration card of the family at the instance of Mr.Parmanand Patel, she has no intention to make Mr.Patel to vacate the premises. This was only with a view to protect the company's interest in that house in the event Jaya chose not to accept the conditional gift which

was given by her father. Over and above that, it is pointed out on her behalf that at the instance of Induben, a power of review was given to Mr.Shirish Patel by signing such authority letter by both Induben and Mr.Parmanand Patel on the same day, which letter has been countersigned by Mr.R.A. Shah. On the top of it, in the disputed document, Jaya has been given the option to decide which 50% of the assets she should take. The submission of Mr.Chinoy appearing for Defendant No.1 (Sudha), therefore, is that what has been done under the disputed documents is quite equitable and fair and prima facie there is no reason to interfere therewith.

38. We have considered the submissions of rival parties and culled out the propositions emerging therefrom. In para 43 of **Gujarat Bottling Co. v. Cocacola - (1995) 5 SCC 545**, the Supreme Court has laid down as to what test a Court should apply while exercising the discretion of granting interlocutory injunction. It has been emphasised that the decision is to be taken at a time when the existence of the legal rights assailed by the Plaintiff and his alleged violation are both contested and are uncertain. The injunction is to be granted to mitigate the risk of injustice to the Plaintiff during the period before the uncertainty could be resolved. At the same time, the need for such a protection is to be weighed against the corresponding need of the Defendant to be protected against the injury resulting from his having been prevented from exercising his own

legal rights. In para 47 of that judgment, the Apex Court has also cautioned that one has to look into the conduct of the party invoking the jurisdiction of the Court because such a party has to show that the party itself was not at fault and that it was not responsible for bringing about the state of things complained of.

39. In the present case, if the injunction as sought is not granted, the disputed documents will come into force and in which case Jaya will have to either agree to accept the conditional gift or allow Sudha to act as the trustee for her share. This is on the background when Induben and Jaya are both seriously disputing the capacity of Plaintiff No.1 to execute the disputed documents. On the other hand, if the injunction as sought is granted, it will mean that although there is much evidence to show that Plaintiff No.1 was capable of signing the disputed documents on 23rd January 2005, those documents will not become operational. It will also mean a reflection at an interlocutory stage on the doctors who have given various certificates on his physical and mental condition at that time as well as on Dr.Udwadia and Dr.Hemant Patel apart from solicitor Mr.R.A. Shah. We do not think that the same will be proper.

40. If the submission of Induben and Jaya is accepted, the consequence of it will be that the company will remain under

their control, and as and when Mr.Patel passes away, two of them as well as Sudha will get 33% share in his assets and shares of the company. Induben and Jaya, therefore, cannot have any objection to Sudha getting 33% of the shares and equivalent earning even at this stage. Similarly, Sudha cannot and does not have objection to Jaya getting 50% of the assets of the company as per the document of gift, but Jaya herself would like to claim only 33%. Sudha cannot have any objection to Induben getting assets and/or earnings worth 5% from the assets of the company which is as per the document of gift. In our view, an interim arrangement on these lines is desirable, considering that the decision on the suit will take its own time. The issues as to whether Mr.Patel was not in a sound mental condition so as to sign the disputed documents on 23rd January 2005 and/or whether he continued to be so at the time of filing of the suit and whether Induben is eligible to file this suit as next friend will have to wait till evidence is led and the suit is decided. In the meanwhile, an appropriate interim arrangement can be done by obtaining the inventory of the property and the flats through the Receiver, though Sudha will have to be appointed as his agent since no adverse finding on the validity of the documents of gift and the Will dated 23rd January 2005 will be rendered as of now. The interim arrangement as suggested will safeguard the interest of Jaya and Induben as well.

41. In the circumstances, to safeguard the interest of all the parties, we pass the following interim order which should meet the ends of justice:-

(1) The Receiver, High Court, Bombay is appointed as Receiver for the assets of Tulsidas V. Patel (Pvt.) Ltd. and Defendant No.1 (Sudha) will act as an Agent of the Receiver. No steps will be taken hereafter based on the documents of gift dated 23rd January 2005. Actions taken so far will also be subject to the result of the suit.

(2) The Receiver will appoint a Chartered Accountant from his panel who will first get an inventory of the properties of Tulsidas V. Patel (Pvt.) Ltd. done in four weeks hereafter. The foregoing clauses will become operational only thereafter.

(3) Defendant No.1 (Sudha) will be permitted to execute all necessary agreements on behalf of the Company for the purposes of safeguarding the assets thereof. She will not encumber nor sell any of the assets of the Company nor will she create any third party rights in any manner though she will be at liberty to give the properties/flats on licence basis. The terms of the document of licence and particularly the licence fee will have to be approved by the above referred Chartered Accountant.

(4) Defendant No.1 (Sudha) will be permitted to operate the bank account of the Company with Union Bank of India and the restriction to operate the same only along with Jaya will stand vacated.

(5) Defendant No.1 (Sudha) will deposit all the earnings of the Company in its account with Union Bank of India and will also honour the liabilities thereof.

(6) The Company will bear all the medical and travel expenses of Plaintiff No.1 (Parmanand Patel) and Plaintiff No.2 (Induben) as and when required.

(7) From the income of the Company, after the liabilities are met, 33% will be made over to Jaya (Defendant No.2) and 5% to Plaintiff No.2 (Induben). Sudha will be permitted to retain 33% of the income for herself. The remaining portion of the income will be invested in fixed deposits with Union Bank of India from time to time. The aforesaid payments and investments will be made by taking the accounts at the end of every 6 months. The accounts will be got approved from the above Chartered Accountant.

(8) Defendant No.1 (Sudha) will render all necessary information to the Receiver and the Chartered Accountant and copies of these accounts will be made over to Defendant No.2 (Jaya) and Plaintiff No.2 (Induben).

(9) The payments, receipts and investments will be without

prejudice to the rights and contentions of all the parties and subject to the outcome of the suit.

(10) Plaintiff No.1 will continue to remain in possession of the Bella Vista Bungalow till the hearing and final disposal of the suit. Plaintiff No.2 (Induben), Defendant No.2 (Jaya) and her husband and daughters will be permitted to stay with him under the orders of Court.

(11) All the properties and assets of the Company will continue to remain in the name of the Company and all agreements concerning them will continue to be entered into only in the name of the Company.

(12) Defendant No.1 (Sudha) will deposit an amount of Rs.50,000/- with the Receiver from the Company's account towards charges and expenses of the Chartered Accountant and the Receiver to begin with. The costs and charges of the Receiver and the Chartered Accountant will be borne from the Company's account from time to time.

42. This order substitutes the ad-interim order passed by the learned Single Judge. It will operate as the order on the motion. The appeal and the motion both stand disposed of. Costs will be costs in the cause.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)